IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 31645 of 2006(P)

PETITIONER:

PRATAP POTHEN, 8 C PENINSULA APARTMENTS, TYLORS ROAD, KILPAUK, CHENNAI-10.

BY ADV. SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.**

3. **THE SPECIAL TAHSILDAR, ADDITIONAL L.A. UNIT, VANCHIYOOR P.O., THIRUVANANTHAPURAM.**

4. **THE TAHSILDAR (R.R.) THIRUVANANTHAPURAM.**

5. **SMT.PHILOMINA MOHAN, T.C.4/2257, HOUSE NO.14, BANK COLONY, KAWDIAR P.O., KURAVANKONAM, THIRUVANANTHAPURAM.**

6. **SMT.PUSHPA JAMES, 383, NARIKODE, CHANDRA NAGAR COLONY, PALAKKAD, PIN-678 007.**

7. **SMT.SUJA MATHEW, MANASSERIL, VJM HOUSE, UPPUTHARA P.O., IDUKKI DISTRICT.**

8. **SMT.DEVI MOHSIN, 370, CHANDSRA NAGAR,**

PALAKKAD-678 007.

9. SMT.PANCHAMI SHAJI,
MOOLAYIL HOUSE,MERRILAND COLONY.

10. AJAY HARRY POTHEN, NO.125, V.V. NAGAR,
N.C.C. ROAD, AMBALAMUKKU P.O.,
THIRUVANANTHAPURAM.

11. SMT.SHANTI GEORGE, T.C.4/2257,
HOUSE NO.14, BANK COLONY, KAWDIAR P.O.,
KURAVANKONAM, THIRUVANANTHAPURAM.

12. TRIVANRUM DEVELOPMENT AUTHORITY (TRIDA)
THIRUVANANTHAPURAM REPRESENTED BY ITS
SECRETARY.

13. T.C. PAUL, SREEVALSOM,
KIDARAM, PEYAD, THIRUVANANTHAPURAM.

BY ADV. SRI.K.A.JALEEL, SC., TRIDA
SRI.G.S.REGHUNATH
SMT.SANGEETHA LAKSHMANA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/04/2007, ALONG WITH WPC NO. 32508 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 PHOTOCOPY OF THE WILL DATED 24.12.1983 EXECUTED BY PONNAMMA POTHEN.

EXHIBIT P1(a) PHOTOCOPY OF THE ORDER DATED 2.1.1995 IN O.P(PROBATE) NO.88/94 OF THE DISTRICT COURT, TRIVANDRUM.

EXHIBIT P2 PHOTOCOPY OF THE REPRESENTATION DATED 12.6.2006 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXHIBIT P3 PHOTOCOPY OF THE NOTICE DATED 16.8.2005 ISSUED BY THE THIRD RESPONDENT.

EXHIBIT P4 PHOTOCOPY OF THE NOICE DATED 19.12.2005 ISSUED BY THE THIRD RESPONDENT.

EXHIBIT P5 PHOTOCOPY OF THE NOTICE DATED 19.12.2005 ISSUED BY THE THIRD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 31645 OF 2006

AND

W.P(C) NO. 32508 OF 2006

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Dated this the 3rd day of April, 2007

J U D G M E N T

Writ Petition No.31645 of 2006 is filed by one Mr.Pratap Pothen for a direction to quash Award No.8 in L.A.C. No.80 of 2005 and for a declaration that the petitioner is entitled to 1/3rd share of the land acquisition amounts due consequent on the proceedings in L.A.C.No.80 of 2005 and also for a direction to include the name of the petitioner also among the list of persons in whose favour Award No.8 is made and direct them to disburse 1/3rd of the total amount payable under the land acquisition proceedings in favour of the petitioner.

2. Writ Petition No.32508 of 2006 is filed by one Smt.Philomina Mohan and her children. The first petitioner is the widow of Mohan Pothen, who died on 25.2.1990, and other petitioners are the children born to them in that wedlock. The fifth respondent is also their daughter. According to the

petitioners they alone are entitled to get the compensation awarded in Award No.8 in L.A.C. No.80 of 2005. It is averred that the attempt of the Land Acquisition Officer is to take possession of the property without depositing the award amount in the Sub Court and hence the whole proceedings are to be quashed.

3. During the pendency of these Writ Petitions, Land Acquisition Officer filed a counter affidavit stating that the amount has been deposited in the court on 20.3.2007. So Writ Petition No.32508 of 2006 has virtually become infructuous. The other issues raised in the Writ Petition have to be adjudicated by the competent authority.

4. Petitioner in W.P(C) No.31645 of 2006 has filed a representation on 12.6.2006 before the Special Tahsildar (LA), Thiruvananthapuram. One of the prayers in the Writ Petition is to issue a direction to the Land Acquisition Officer to consider that application. The prayer is opposed by the petitioners in the other Writ Petition. According to them, petitioner in Writ Petition No.31645 of 2006 has absolutely no right, title or possession over

the property and the attempt is only to protract or delay the proceedings. But, if, as a matter of fact, such a representation was received by the Land Acquisition Officer, it is only just and proper that the Land Acquisition Officer pass some orders in that application. But, in view of the stand taken by the petitioners in Writ Petition No.32508 of 2006, it is only just and proper that the petitioners in that Writ Petition are also heard before taking any decision in the representation dated 12.6.2006, which is marked as Exhibit P2 in Writ Petition No.31645 of 2006. In the result, Writ Petitions are disposed of as follows:

5. Writ Petition No.32508 of 2006 is disposed of without prejudice to the rights of the petitioners to raise all the contentions raised in the Writ Petition before the competent Forum at the relevant time. Writ Petition No.31645 of 2006 is disposed of with a direction to the Special Tahsildar (LA), third respondent in the Writ Petition, to consider and pass orders on Exhibit P2 representation, if, as a matter of fact, the same was received by him as stated in the Writ Petition. But before passing

orders, the petitioners in Writ Petition No.32508 of 2006 also be given an opportunity of being heard in the matter. It is made clear that in view of the disposal of these Writ Petitions, it is open to the TRIDA or the Land Acquisition Officer to proceed with the acquisition proceedings and demolish the acquired buildings.

Learned Government Pleader submitted that revenue recovery proceedings are pending against the petitioners in Writ Petition No.32508 of 2006. I make it clear that this judgment will not be a bar for the Government to take appropriate action for recovering any amount due to them in accordance with law.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

15TH MARCH, 2007